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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

TM ASSOCIATES MANAGEMENT, INC.,
a Maryland Corporation,

Plaintiff,

v.

Civil Action No.: 15-C-568
Judge Bloom

DEER FOREST LIMITED PARTNERSHIP,
a West Virginia Limited Partnership, DYLAN
HEIGHTS LIMITED PARTNERSHIP, a West
Virginia Limited Partnership, OLD ASH VILLAGE
LIMITED PARTNERSHIP, a West Virginia
Limited Partnership, PAULI HEIGHTS LIMITED
PARTNERSHIP, a West Virginia Limited Partnership,
BARBARA HEIGHTS LIMITED PARTNERSHIP, a
West Virginia Limited Partnership, BROOK VILLAGE
LIMITED PARTNERSHIP, a West Virginia Limited
Partnership, DUNHILL LIMITED PARTNERSHIP, a
West Virginia Limited Partnership, HUDSON PLACE
LIMITED PARTNERSHIP, a West Virginia Limited
Partnership, VANMETER HEIGHTS LIMITED
PARTNERSHIP, a West Virginia Limited Partnership,
and WILSHERE LANDING LIMITED
PARTNERSHIP, a West Virginia Limited Partnership,

Defendants.

AMENDED COMPLAINT

Now comes plaintiff, TM Associates Management, Inc. ("Plaintiff"), by counsel, and brings the following Complaint against Defendants and states as follows:

The Parties and Jurisdiction

1. Plaintiff is now, and at all times relevant herein was, a corporation licensed to do business in Maryland with its principal place of business located at 15825 Shady Grove Road, Suite 55, Rockville, Maryland 20850.
2. Defendant Deer Forest Limited Partnership ("Deer Forest"), upon information and belief, is now, and at all times relevant herein was, a limited partnership licensed to do business

in Kanawha County, West Virginia with its principal place of business located in Braxton County, West Virginia.

3. Defendant Dylan Heights Limited Partnership ("Dylan Heights"), upon information and belief, is now, and at all times relevant herein was, a limited partnership licensed to do business in Kanawha County, West Virginia with its principal place of business located in Nicholas County, West Virginia.

4. Defendant Old Ash Village Limited Partnership ("Old Ash Village"), upon information and belief, is now, and at all times relevant herein was, a limited partnership licensed to do business in Kanawha County, West Virginia with its principal place of business located in Mason County, West Virginia.

5. Defendant Pauli Heights Limited Partnership ("Pauli Heights"), upon information and belief, is now, and at all times relevant herein was, a limited partnership licensed to do business in Kanawha County, West Virginia with its principal place of business located in Mercer County, West Virginia.

6. Defendant Barbara Heights Limited Partnership ("Barbara Heights"), upon information and belief, is now, and at all times relevant herein was, a limited partnership licensed to do business in Kanawha County, West Virginia with its principal place of business located in Harrison County, West Virginia.

7. Defendant Brook Village Limited Partnership ("Brook Village"), upon information and belief, is now, and at all times relevant herein was, a limited partnership licensed to do business in Greenbrier County, West Virginia with its principal place of business located in Greenbrier County, West Virginia.

8. Defendant Dunhill Limited Partnership ("Dunhill"), upon information and belief, is now, and at all times relevant herein was, a limited partnership licensed to do business in Kanawha County, West Virginia with its principal place of business located in Cabell County, West Virginia.

9. Defendant Hudson Place Limited Partnership ("Hudson Place"), upon information and belief, is now, and at all times relevant herein was, a limited partnership licensed to do business in Jackson County, West Virginia with its principal place of business located in Jackson County, West Virginia.

10. Defendant VanMeter Heights Limited Partnership ("VanMeter Heights"), upon information and belief, is now, and at all times relevant herein was, a limited partnership licensed to do business in Raleigh County, West Virginia with its principal place of business located in Raleigh County, West Virginia.

11. Defendant Wilshere Landing Limited Partnership ("Wilshere Landing"), upon information and belief, is now, and at all times relevant herein was, a limited partnership licensed to do business in Greenbrier County, West Virginia with its principal place of business located in Greenbrier County, West Virginia.

12. This action is brought pursuant to the Uniform Declaratory Judgments Act, being Chapter 55, Section 13, Article 1, et seq., and W.Va. Code § 55-8-3 for breach of contract. Accordingly, the Court has the ability to determine the rights of the parties as to the status of the encumbrances in question herein.

13. Plaintiff's rights are affected by the status of the management of, and payment of services for, the properties owned by Defendants.

14. Venue is proper in Kanawha County, West Virginia.

Factual Background

15. Plaintiff restates, re-alleges and reaffirms all averments set forth in numerical paragraphs 1-17 above, the same as if set forth herein at length.

16. On or about April 23, 2013, Defendant Dunhill executed a "Management Agreement for Rural Development (RD) Financed Multiple Family Housing (MFH) Projects" (the "Management Agreement") with Plaintiff wherein Plaintiff agreed to manage a housing development known as Dunhill Apartments located in Huntington, Cabell County, West Virginia for a term of three (3) years beginning on June 1, 2013. As a part of the Management Agreement, Dunhill agreed to provide for the compensation of all staff and services required to fulfill the obligations under the Management Agreement. Further, Dunhill agreed to compensate Plaintiff for its services and indemnify Plaintiff for any payment of compensation Plaintiff extends on Dunhill's behalf.

17. Currently, Dunhill owes Plaintiff approximately \$22,000.00 for management fees.

18. On or about May 13, 2013, Defendant Brook Village executed a "Management Agreement" with Plaintiff wherein Plaintiff agreed to manage a housing development known as Brook Village located in Lewisburg, Greenbrier County, West Virginia for a term of three (3) years beginning on June 1, 2013. As a part of the Management Agreement, Brook Village agreed to reimburse Plaintiff for all compensation paid to site management, maintenance employees, and other staff. Brook Village further agreed to compensate Plaintiff for its services under the Management Agreement.

19. Currently, Brook Village owes Plaintiff approximately \$8,000.00 for management fees.

20. On or about April 23, 2013, Defendant Old Ash Village executed a "Management Agreement" with Plaintiff wherein Plaintiff agreed to manage a housing development known as Old Ash Village located in the Town of New Haven, Mason County, West Virginia for a term of three (3) years beginning on June 1, 2013. As a part of the Management Agreement, Old Ash Village agreed to provide for the compensation of all staff and services required to fulfill the obligations under the Management Agreement. Further, Old Ash Village agreed to compensate Plaintiff for its services and indemnify Plaintiff for any payment of compensation Plaintiff extends on Old Ash Village's behalf.

21. Currently, Old Ash Village owes Plaintiff approximately \$27,500.00.

22. On or about September 17, 2014, Defendant Deer Forest executed a "Management Agreement" with Plaintiff wherein Plaintiff agreed to manage a housing development known as Deer Forest located in Gassaway, Braxton County, West Virginia for a term of three (3) years beginning on September 17, 2014. As a part of the Management Agreement, Deer Forest agreed to reimburse Plaintiff for all compensation paid to site management, maintenance employees, and other staff. Deer Forest further agreed to compensate Plaintiff for its services under the Management Agreement.

23. Currently, Deer Forest owes Plaintiff approximately \$63,400.00.

24. On or about September 17, 2014, Defendant Dylan Heights executed a "Management Agreement" with Plaintiff wherein Plaintiff agreed to manage a housing development known as Dylan Heights located in Summersville, Nicholas County, West Virginia for a term of three (3) years beginning on September 17, 2014. As a part of the Management Agreement, Dylan Heights agreed to reimburse Plaintiff for all compensation paid to site

management, maintenance employees, and other staff. Dylan Heights further agreed to compensate Plaintiff for its services under the Management Agreement.

25. Currently, Dylan Heights owes Plaintiff approximately \$35,500.00.

26. On or about September 17, 2014, Defendants Barbara Heights, Hudson Place, VanMeter Heights, Wilshire Landing, and Pauli Heights each executed separate Management Agreements with Plaintiff wherein Plaintiff agreed to manage the following housing developments, respectively:

a. Barbara Heights located in Shinnston, Harrison County, West Virginia for a term of three (3) years beginning on September 17, 2014.

b. Hudson Place located in Ripley, Jackson County, West Virginia for a term of three (3) years beginning on September 17, 2014.

c. VanMeter Heights located in Beckley, Raleigh County, West Virginia for a term of three (3) years beginning on September 17, 2014.

d. Wilshire Landing located in Lewisburg, Greenbrier County, West Virginia for a term of three (3) years beginning on September 17, 2014.

e. Pauli Heights located in Princeton, Mercer County, West Virginia for a term of three (3) years beginning on September 17, 2014.

27. Each Management Agreement provided that the respective Defendant would be obligated to reimburse Plaintiff for all compensation paid to site management, maintenance employees, and other staff. Each Defendant also agreed to compensate Plaintiff for its services under the Management Agreements.

28. Currently, Barbara Heights owes Plaintiff approximately \$11,000.00; Hudson Place owes Plaintiff approximately \$12,700.00; VanMeter Heights owes Plaintiff approximately

\$23,900.00; Wilshire Landing owes Plaintiff approximately \$9,000.00; and Pauli Heights owes Plaintiff approximately \$60,000.00.

29. On or about December 1, 2014, Douglas Pauley, as General Partner of each and every other Defendant in this action, sent termination letters on behalf of each and every limited partnership to Plaintiff terminating the Management Agreements in place.

30. Upon terminating the Management Agreements, Mr. Pauley did not, and has continued to not, pay the agreed upon amounts due and owing to Plaintiff. To date, the amounts currently owed to Plaintiff total approximately \$264,000.00.

COUNT I – DECLARATORY JUDGMENT

31. Plaintiff restates, re-alleges and reaffirms all averments set forth in numerical paragraphs 1-33 above, the same as if set forth herein at length.

32. Because each entity agreed to the terms of their respective Management Agreements, it rightfully owes Plaintiff the outstanding sums of money for services and compensation performed by or paid by Plaintiff.

33. A real and justifiable controversy exists requiring a declaratory judgment.

COUNT II – BREACH OF CONTRACT

34. Plaintiff restates, re-alleges and reaffirms all averments set forth in numerical paragraphs 1-36 above, the same as if set forth herein at length.

35. Under the contract, upon termination, the owner of the properties agreed to pay Plaintiff an amount sufficient to satisfy and obligations or liabilities Plaintiff may have properly incurred on behalf of the owner of the property.

36. To date, no Defendant has paid Plaintiff the amounts listed above as being due and owing to Plaintiff.

COUNT III – UNJUST ENRICHMENT

37. Plaintiff restates, re-alleges and reaffirms all averments set forth in numerical paragraphs 1-39 above, the same as if set forth herein at length.

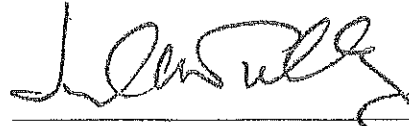
38. Defendants have enjoyed the benefit of Plaintiff's management services and its payment of compensation of the required employees for a minimum of two and one half months without paying Plaintiff for those services.

39. It is unjust to allow Defendants to benefit from Plaintiff's management services without requiring Defendants to pay Plaintiff the agreed upon amounts for the time periods in which Plaintiff provided its management services.

WHEREFORE, Plaintiff prays that (i) this Complaint be filed and that the Court enter an Order declaring that each entity owes Plaintiff the amounts listed above; (ii) judgment be entered against all Defendants for their respective amounts totaling \$327,917.36, plus any amounts rightly owed to Plaintiff which have accrued since the Management Agreements were terminated; (iii) judgment against all Defendants for any sums the Court determines are rightly owed to Plaintiff due to Defendants' unjust enrichment; (iv) that the Court award Plaintiff costs and attorneys fees; and (v) any other and further relief as the Court deems appropriate.

Plaintiff further demands a trial by jury.

Respectfully Submitted,



Jared M. Tully (WV Bar No. 9444)
Elizabeth A. Moore (WV Bar No. 12164)
Frost Brown Todd LLC
500 Lee Street, East
Laidley Tower – Suite 401
Charleston, WV 25301
(304) 345-0111 / (304) 345-0115 (f)
*Counsel for TM Associates Management,
Inc.*